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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 GINA GARCIA NAVARRETE,

13 Plaintiff,

14 vs.

15 POLY-WEST, INC., et al.,

16 Defendants.

CASE NO: 2:18-cv-01805-GMN-NJK

**PLAINTIFF'S SECOND MOTION TO
EXTEND TIME FOR SERVICE OF
PROCESS PURSUANT TO F.R.C.P. 4(M)**

17 COMES NOW, Plaintiff GINA GARCIA NAVARARETE, by and through her counsel,
18 the law firm of Hatfield & Associates, Ltd., and files this Motion to Extend Time for Service of
19 Process pursuant to F.R.C.P. 4(m). This motion is made and based upon the pleadings and
20 papers on file herein, the attached Memorandum of Points and Authorities and the Declaration of
21 counsel.

22 Dated this 12th day of April 2019.

HATFIELD & ASSOCIATES, LTD.

23 By: /s/ Trevor J. Hatfield

24 Trevor J. Hatfield, Esq. (SBN 7373)
25 703 South Eighth Street
26 Las Vegas, Nevada 89101
27 (702) 388-4469 Tel.

Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I.

Plaintiff moves for an Order briefly extending the time for service of the Complaint and Summons on Defendants, [ECF No. 15] based on F.R.C.P. 4(m). The Court had previously ordered that service of the Complaint be effected within sixty days' time. [ECF No. 14] Plaintiff has good cause for the extension of the time period, and even absent good cause the Court has discretion to extend the time period. Out of an abundance of caution, Plaintiff requests an extension on both grounds. Plaintiff requests another two weeks' time to effect service.

Plaintiff has good cause for an extension of the time for service. Plaintiff filed her (over two hundred page) Complaint pro se. Counsel has amended her Complaint and has filed the Amended Complaint but has not had contact with Plaintiff to review the Amended Complaint. Moreover, an additional issue that has created an impediment to effectuating service is that Plaintiff is not a native English speaker and Plaintiff did not request a summons for Defendant so Plaintiff must receive a signed summons from the Clerk of the Court before effecting service. Plaintiff requests a few weeks' time to have Plaintiff review the Amended Complaint, overcome any language barriers that may exist, and make any revisions, if necessary, before serving Defendant.

II.

Upon a plaintiff's failure to serve a complaint within 90 days, pursuant to FRCP 4(m), failure to serve does not automatically require dismissal, courts distinguish between justified delay or "good cause" and excusable neglect. *See, Lemoge v. U.S.* 587 F.3d 1188, 1198 (9th Cir. 2009).

Upon a showing of justified delay, the district court must grant a plaintiff an extension for "an appropriate period." *Id.* If good cause is not shown, the district court has the option of

1 exercising its discretion by excusing the delay and issuing an order that directs that service be
2 completed within a specified additional period of time. *Id.*

3 Pursuant to the *Lemoge* case, a plaintiff may be required to show excusable neglect,
4 defendant's lack of prejudice, and plaintiff's severe prejudice if the complaint is dismissed. In
5 this case, Plaintiff will suffer severe prejudice if this case is dismissed, as this is an employment
6 tort case and as the statute of limitations may have expired as to Plaintiff's 90-day deadline of 42
7 U.S.C. § 2000e-16(c). Most telling, however, is the lack of prejudice to Defendant; Defendant's
8 counsel has refused to accept service on behalf of Defendant.
9


10 As Plaintiff and her counsel have experienced unforeseen difficulties but have not been
11 dilatory in seeking to effectuate service, Plaintiff respectfully requests that the Court grant
12 Plaintiff's motion.
13

14 Dated this 12th day of April 2019.

HATFIELD & ASSOCIATES, LTD.

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20 *Attorneys for Plaintiff*

21
22 IT IS SO ORDERED.

23
24 
25 UNITED STATES MAGISTRATE JUDGE
26 DATE: April 15, 2019
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